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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,528	05/01/2007	Yuzi Ando	0020-5510PUS1	9788
2292 7590 10/29/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
TEATERS, LINDSEY C				
ART UNIT		PAPER NUMBER		
3742				
NOTIFICATION DATE		DELIVERY MODE		
10/29/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

# Office Action Summary

**Application No.**

10/590,528

**Applicant(s)**

ANDO ET AL.

**Examiner**

LINDSEY C. TEATERS

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 01 May 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/CIS)  
Paper No(s)/Mail Date 08/24/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 are provisionally rejected on the ground of nonstatutory obviousness-

type double patenting as being unpatentable over claims 1-6 of copending Application

No. 10/590,529. Although the conflicting claims are not identical, they are not

patentably distinct from each other because claims 1-6 of the copending application

explicitly teach every element of claims 1-6 of the present application, only differing by

claiming "a plurality of steam outlets...in sidewalls facing each other across said center

line of the recessed part of the tray-shaped case" (claim 2, copending application) instead

of "a plurality of steam outlets...in both of sidewalls of the recessed part of the tray-

Art Unit: 3742

shaped case that adjoin the sidewall provided with the steam supply port" (claim 1, present application).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitation "the recess" in line 16. There is insufficient antecedent basis for this limitation in the claim. Claim 1 previously cites a recessed part.
6. Claim 1 recites the limitation "both of sidewalls" in line 19. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not previously cite sidewalls.
7. The term "roughly" in claim 2, line 3 is a relative term which renders the claim indefinite. The term "roughly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the recessed part is symmetrical about a center line of steam flow.
8. The term "roughly" in claim 2, line 8, is a relative term which renders the claim indefinite. The term "roughly" is not defined by the claim, the specification does not

Art Unit: 3742

provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the heater is symmetrical about the center line.

9. The term "roughly" in claim 3, line 4, is a relative term which renders the claim indefinite. The term "roughly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the plane is perpendicular to the center line.

10. The term "generally" in claim 4, line 3, is a relative term which renders the claim indefinite. The term "generally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the recessed part is pentagonal.

11. The term "generally" in claim 4, line 6, is a relative term which renders the claim indefinite. The term "generally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear to what degree the two sides continuous with both ends of the U-shape form a V-shape.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3742

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(c), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carron et al (US 5,402,709).

Carron et al teaches a steam cooker (fig 7) comprising a steam generator (44) for generating steam, a steam temperature-raising device (58, 64, 46) for raising a temperature of steam coming from the steam generator, a heating chamber (40) provided with a ceiling steam outlet (56) on its ceiling side, in which an object to be cooked is heated by steam supplied from the steam temperature-raising device via the ceiling steam outlet, the steam temperature-raising device including a tray-shaped case (46) having a recessed part which has a sidewall (108) provided with a steam supply port (52) through which steam from the steam generator enters the recessed part, the tray-shaped case being placed with an opening (112) directed downward, on the heating chamber at the ceiling steam outlet, and a heater (58) placed in the recess, a plurality of steam outlets (112) for

Art Unit: 3742

supplying steam into the heating chamber sideways provided in a wall adjoining the sidewall provided with the steam supply port on the opposite side of the steam supply port (fig 7), the recessed part has a planar shape (fig 7), the steam supply port is provided in a sidewall of the recessed part (fig 7), and adjacent sidewalls are smoothly continuous with each other (inherent, to encapsulate the steam before exiting through steam supply holes).

Carron et al fails to teach that the plurality of steam outlets are provided in sidewalls of the recessed part, that the recessed part is pentagonal, having three sides forming a U-shape and two sides continuous with the ends of the U-shape forming a V-shape, or that the recessed part has three sides forming a U-shape and an arc-shaped outer periphery that is continuous with both ends of the U-shape and curves outward, or that the corners of the recessed part are curved. It would have been obvious to one of ordinary skill in the art to modify the shape of the recessed part of the tray-shaped case in any shape desired and to curve the corners of the recessed part. The shape of the recessed part is a matter of design choice that could be presented in a variety of alternatives, still yielding the same functionality. It is also known that curving wall joints promotes flow around the corners with less resistance.

15. Claims 2-3 rejected under 35 U.S.C. 103(a) as being unpatentable over Carron et al (US 5,402,709) in view of Koether et al (US 5,485,780).

Carron et al teaches that the recessed part has a planar shape that is roughly symmetrical with respect to a center line of steam flow entering through the steam supply port (fig 7) and a wall opposite the steam supply port of the recessed part is inclined with respect to a line roughly perpendicular to the center line (fig 7).

Carron et al fails to teach that a planar shape of the heater is roughly symmetrical with respect to the center line. Koether et al, however, teaches an oven having a tray-shaped case having a recessed part (below top wall 52, see fig 4) having a heaters (30) placed in the recessed part such that the heater is arranged symmetrically with respect to a center line of heated flow (fig 6).

In view of Koether et al's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to arrange the heater, taught by Carron et al, symmetrically within the recessed part about a center line of steam flow. The heat distribution to the flow of steam will be more even due to the symmetric placement of the heater.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY C. TEATERS whose telephone number is 571-270-5913. The examiner can normally be reached on Mon-Thur 8:30am-6:00pm :: alternating Fri 8:30am-4:00pm.



Art Unit: 3742

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LINDSEY C TEATERS/  
Examiner, Art Unit 3742

10/23/2009  
/TU B HOANG/  
Supervisory Patent Examiner, Art Unit 3742